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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 23rd November, 1973:—

BILL NO. XXXI OF 1973

A Bill further to amend the Code of Civil Procedure, 1908.

BE it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Code of Civil Procedure (Amendment) Act, 1973.

Amendment of Order XXXVIII.

5 of 1908.

2. In the Code of Civil Procedure, 1908, (hereinafter referred to as the principal Act), in the First Schedule, in Order XXXVIII, after Rule 5, the following Rule shall be inserted, namely:—

Defendant to furnish security in certain cases.

"5-A. Notwithstanding any law for the time being in force, in every suit filed by the Government or by any public undertaking or public enterprise or by any nationalised bank against any citizen, firm or private or public limited company for recovery of any sum, whether liquidated or unliquidated by way of compensation, damages

or otherwise on the basis of breach of contract or any other civil liability or otherwise; the Court shall direct the defendant on the application of the plaintiff to furnish security for such sum as may be mentioned in the plaint.".

Amendment of Order XXXVIII.

3. In the principal Act, in the First Schedule, in Order XXXVIII, after Rule 6, the following Rule shall be inserted, namely:—

Defendant's property to be attached in case of failure to furnish security.

"6-A. If the defendant fails to furnish such security within one week of the order of the Court, the Court shall order that all property of the defendant be attached and the attachment shall not be withdrawn until the final disposal of the suit.".

STATEMENT OF OBJECTS AND REASONS

The common experience of last more than twenty years has been that the Government, the nationalised industries, public enterprises and Government statutory corporations have lost enormously in their suits against private parties and private or public companies in spite of their success in the courts of law because of the defects in the Code of Civil Procedure, 1908. What they obtain is ultimately a paper decree and no amount can be recovered. Lakhs of rupees are thus lost in litigation.

The Bill seeks to remedy this defect.

VITHAL GADGIL.

II

BILL No. XXXIII OF 1973

A Bill to provide for the established of an Appellate Tribunal in relation to industrial disputes and for certain matters incidental thereto.

BE it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and extent.

1. (*1*) This Act may be called the Industrial Disputes (Appellate Tribunal) Act, 1973.

(*2*) It extends to the whole of India.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "Appellate Tribunal" means the Labour Appellate Tribunal constituted under section 4;

(*b*) "Chairman" means the Chairman of the Appellate Tribunal;

(*c*) "member" means a member of the Appellate Tribunal;

(*d*) "prescribed" means prescribed by rules made under this Act;

(*e*) "Tribunal" means—

(*i*) a Labour Court, Industrial Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947; 14 of 1947.

(*ii*) in relation to cases where an appeal lies from any court, wage board or other authority set up in any State under any law relating to the adjudication of industrial disputes made, whether before or after the commencement of this Act, by the legislative authority of the State to any other court, board or authority set up in the State under such law, that court, board or authority exercising appellate jurisdiction within the State; or

(*iii*) in relation to other cases, where no appeal lies under any law referred to in sub-clause (*ii*), any court, board or other authority set up in any State under such law;

(*f*) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment and includes—

(*i*) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(*ii*) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

(*iii*) any travelling concession; but does not include—

(*a*) any bonus;

(*b*) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(*c*) any gratuity payable on the termination of his service;

(*g*) the expressions "appropriate Government", "employer", "lockout", "strike" and "workman" have the meanings respectively assigned to them in section 2 of the Industrial Disputes Act, 1947.

14 of 1947.

3. The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law. Effect on other laws.

CHAPTER II

THE LABOUR APPELLATE TRIBUNAL AND ITS CONSTITUTION AND FUNCTIONS

4. The Central Government may, by notification in the Official Gazette and with effect from a date specified therein, constitute a Labour Appellate Tribunal for hearing appeals from the awards or decisions of Labour Courts, Industrial Tribunals and National Tribunal constituted under the Industrial Disputes Act, 1947, in accordance with the provisions of this Act. Constitution of the Appellate Tribunal.

14 of 1947.

Composition of the Appellate Tribunal and term of office of its members.

5. (1) The Appellate Tribunal shall consist of a Chairman and such number of other members as the Central Government may, from time to time, think fit to appoint.

(2) Every member of the Appellate Tribunal shall be a person who—

(*a*) is or has been a Judge of a High Court; or

(*b*) is qualified for appointment as a Judge of a High Court; or

(*c*) has been a member of an industrial tribunal for not less than two years:

Provided that the appointment to the Appellate Tribunal of any person not qualified under clause (*a*) or clause (*c*) shall be made in consultation with the Supreme Court.

(3) A member shall unless otherwise specified in the order of appointment, hold office for a term of five years from the date on which he enters upon his office and shall, on the expiry of the term of his office, be eligible for reappointment:

Provided that no member shall hold office after he has attained the age of sixty-five years.

(4) A member shall be entitled to such salary and allowances and to such rights in respect of leave and pensions as may be prescribed:

Provided that the salary of a member shall not be varied to his disadvantage after his appointment.

Seat of the Appellate Tribunal.

6. The Appellate Tribunal shall have its principal seat at such place as the Central Government may, by notification in the Official Gazette, appoint.

Jurisdiction of the Appellate Tribunal.

7. Subject to the provisions of this section, an appeal shall lie to the Appellate Tribunal from any award or decision of a Labour Court, Industrial Tribunal and National Tribunal if—

(*a*) the appeal involves any substantial question of law; or

(*b*) the award or decision is in respect of any of the following matters, namely:—

(*i*) wages,

(*ii*) bonus or travelling allowance,

(*iii*) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force,

(*iv*) any sum paid or payable to, or on behalf of, the workman to defray special expenses entailed on him by the nature of his employment,

(*v*) gratuity payable on the termination of his service,

(*vi*) classification by grades,

(*vii*) retrenchment of workmen,

(*viii*) any other matter which may be prescribed.

Constitution of Benches of the Appellate Tribunal.

8. (1) The Chairman may constitute as many Benches of the Appellate Tribunal as may be deemed necessary for the purpose of carrying out the functions and exercising the powers of the Appellate Tribunal.

(2) Each Bench shall consist of not less than two members, of whom one may be appointed as the President of the Bench.

(3) A Bench shall sit at such place or places as may be specified by the Chairman by notification in the Official Gazette:

Provided that the Bench may, if it is satisfied that it will tend to the general convenience of the parties or witnesses in any particular case, sit at any other place.

(4) The Chairman may, from time to time, allot any case or any specified class of cases to any Bench and may also from time to time transfer any case or any specified class of cases from one Bench to another.

Powers and procedure of the Appellate Tribunal.

9. (1) The Appellate Tribunal shall have the same powers as are vested in a civil court, when hearing an appeal under the Code of Civil
5 of 1908. Procedure, 1908.

(2) Without prejudice to the generality of the provisions contained in sub-section (1) the Appellate Tribunal may, after hearing the appellant, dismiss the appeal if, in its judgment, there is no sufficient ground for proceeding with the appeal and in such cases, the Appellate Tribunal shall briefly record its reasons for so doing.

(3) The Appellate Tribunal shall deemed to be a civil court for the
5 of 1898. purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 and any proceeding before an Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the
45 of 1860. Indian Penal Code.

(4) The Appellate Tribunal may, if it so thinks fit, appoint, after consulting the parties to the dispute and the appropriate Government, one or more persons as assessors to advise it in any proceeding before it.

(5) The Appellate Tribunal shall, after hearing the appeal, pronounce its decision either at once or on some future date to which the appeal is adjourned for that purpose.

(6) The decision shall be in writing and signed by the members of the Appellate Tribunal hearing the appeal.

(7) The Appellate Tribunal may confirm, vary or reverse the award or decision appealed from and may pass such orders as it may deem fit, and where the award or decision is reversed or varied, the decision of the Appellate Tribunal shall state the reliefs to which the appellant is entitled.

(8) In the event of any difference of opinion among the members of a Bench, the opinion of the majority shall prevail, but where there is no such majority, the President of the Bench shall refer to the Chairman either the whole appeal or the particular point or points on which there has been difference of opinion among the members of the Banch and on such reference the Chairman shall either hear the matter himself or transfer it to any other member and the decision thereon of the Chairman or the other member, as the case may be, shall prevail.

(9) The Appellate Tribunal shall send a copy of the decision to the tribunal concerned and to the appropriate Government, as soon as practicable, within one week from the date of the decision.

(10) The Appellate Tribunal shall follow such procedure as may be prescribed, and subject thereto, it may, by order, regulate its practice and procedure and the provisions of the Code of Civil Procedure, 1908 shall, so far as they are not inconsistent with this Act or the rules or orders made thereunder, apply to all proceedings before the Appellate Tribunal. 5 of 1908.

(11) Subject to the rules made under this Act, the costs of, and incidental to, any proceeding before the Appellate Tribunal shall be in the discretion of the Appellate Tribunal, and the Appellate Tribunal shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid and to give all necessary directions for the purposes aforesaid, and such costs may be recovered in the manner provided for in sub-section (1) of section 20.

Limitation for filing appeals.

10. An appeal under this Act may be preferred within thirty days—

(i) from the date of the publication of the award or decision, where such publication is provided for by the law under which that award or decision is made; or

(ii) from the date of making the award or decision, where there is no provision for such publication:

Provided that the Appellate Tribunal may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Form of Appeal.

11. An appeal under this Act shall be presented in the form of a memorandum setting forth, concisely and under distinct heads, the grounds of objection to the award or decision appealed from.

Presentation of appeal.

12. An appeal under this Act against any award or decision of a tribunal may be presented to the Appellate Tribunal by—

(i) any party which is aggrieved by the award or decision; or

(ii) the appropriate Government or the Central Government where it is not the appropriate Government, whether or not such Government is a party to the dispute.

Right of the Central Government and of the appropriate Government to appear before the Appellate Tribunal.

13. The appropriate Government or the Central Government, where it is not the appropriate Government, may, whether or not such Government is a party to the appeal, appear in any proceeding before the Appellate Tribunal and, thereupon, such Government shall have the right to be heard as if it were a party to that appeal.

Stay of award or decision by the Appellate Tribunal.

14. Where an appeal is preferred, the Appellate Tribunal may, after giving the parties an opportunity of being heard, stay, for reasons to be recorded, the implementation of the award or decision or any part thereof for such period and on such conditions as it thinks fit:

Provided that no such order for stay shall be made unless the Appellate Tribunal is satisfied that the implementation of the award or decision may have serious repercussions on the industry concerned or other industries or on the workmen employed in such industry or industries.

Commencement of decision of the Appellate Tribunal.

15. (*1*) The decision of the Appellate Tribunal shall be enforceable on the expiry of thirty days from the date of its pronouncement:

Provided that where the appropriate Government is of opinion that it would be inexpedient on public grounds to give effect to the whole or any part of the decision the appropriate Government may, before the expiry of the said period of thirty days, by order in the Official Gazette, either reject the decision or modify it.

(*2*) Where the appropriate Government rejects or modifies any decision under the proviso to sub-section (*1*) it shall, on the first available opportunity, lay that decision together with its reasons for rejecting or modifying the same before the Legislative Assembly of the State, or where the appropriate Government is the Central Government, before Parliament.

Effect of decision of the Appellate Tribunal.

16. Where on appeal from any award or decision of tribunal, the Appellate Tribunal modifies in any manner whatsoever that award or decision, the decision of the Appellate Tribunal shall, when it becomes enforceable under section 15, be deemed to be substituted for that award or decision of the tribunal and shall have effect for all purposes in the same manner and in accordance with the same law under which the award or decision of the industrial tribunal was made as if the industrial tribunal made the award or decision as modified by the decision of the Appellate Tribunal.

Commencement and conclusion of appeal.

17. An appeal before the Appellate Tribunal shall be deemed to have commenced on the date of the filing of the appeal and such appeal shall be deemed to have concluded on the date on which the decision of the Appellate Tribunal becomes enforceable under section 15.

CHAPTER III

CERTAIN PROVISIONS RELATING TO INDUSTRIAL TRIBUNALS SET UP UNDER OTHER LAWS

Commencement of award or decision of Appellate Tribunal.

18. (*1*) Subject to the provisions of this Act, the award or decision of any tribunal shall, notwithstanding anything contained in any law, be enforceable on the expiry of thirty days—

(*i*) from the date of the publication of the award or decision, where such publication is provided for by the law under which that award or decision is made, or

(*ii*) from the date of making the award or decision, where there is no provision of such publication:

Provided that in cases where the award or decision is not appealable under this Act, and where the appropriate Government is a party to the dispute and is of opinion that it would be inexpedient on public grounds to give effect to the whole or any part of the award or decision, it may, before the expiry of the said period of thirty days, by order in the Official Gazette, either reject or modify the award or decision.

(2) Where the appropriate Government rejects or modifies any award or decision under the proviso to sub-section (1), it shall, on the first available opportunity, lay that award or decision together with its reasons for rejecting or modifying the same before the Legislative Assembly of the State, or where the appropriate Government is the Central Government before Parliament.

(3) Subject to the provisions of sub-section (1) the award or decision of any tribunal shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date on which that award or decision becomes enforceable under sub-section (1).

Exclusion of certain period in the computation of the period of operation of any award or decision of tribunal.

19. In the computation of the period of operation of any award or decision of any tribunal, the period during which the implementation of that award or decision is stayed by the Appellate Tribunal shall be excluded.

Recovery of money due from an employer under an award or decision.

20. (1) Any money due from an employer under any award or decision of a tribunal may be recovered as arears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision.

(2) Where any workman is entitled to receive from the employer any benefit under an award or decision of an tribunal which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to the rules made under this Act, be determined by that tribunal, and the amount so determined may be recovered as provided for in sub-section (1).

(3) For the purpose of computing the money value of a benefit, the tribunal may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the tribunal, and the said tribunal shall determine the amount after considering the report of the commissioner and other circumstances of the case.

Maintenance of records by tribunals.

21. Every tribunal shall, in respect of any case from which an appeal would lie under this Act, maintain, subject to the rules made under this Act, a record of the proceedings before it including the statements of parties and witnesses and relevant documents.

CHAPTER IV

MISCELLANEOUS

Conditions of service, etc., to remain unchanged during a certain period.

22. During the period of thirty days allowed for the filing of an appeal under section 10 or during the pendency of any appeal under this Act, no employer shall—

(*a*) alter, to the prejudice of the workmen concerned in such appeal, the conditions of service applicable to them immediately before the filing of such appeal, or

(*b*) discharge or punish, whether by dismissal or otherwise, any workmen concerned in such appeal, same with the express permission in writing of the Appellate Tribunal.

Special provision for decision whether conditions of service, etc., charged during pendency of proceedings.

23. Where an employer contravenes the provisions of section 22 during the pendency of proceedings before the Appellate Tribunal, any employee aggrieved by such contravention may make a complaint in writing, in the prescribed manner to such Appellate Tribunal and on receipt of such complaint, the Appellate Tribunal shall decide the complaint as if it were an appeal pending before it, in accordance with the provisions of this Act and shall pronounce its decision thereon and the provisions of this Act shall apply accordingly.

Prohibition of strikes and lock-outs.

24. Notwithstanding anything contained in any law for the time being in force, no workman who is employed in any industrial establishment shall go on strike and no employer of any such workman shall declare a lock-out—

(*a*) during the period of thirty days allowed for the filing of an appeal under section 10; or

(*b*) during the pendency of an appeal before the Appellate Tribunal.

Illegal strikes and lock-outs.

25. A strike or lock-out shall be illegal, if it is declared, commenced or contained in contravention of the provisions of section 24.

Penalty for illegal strikes and lock-outs.

26. (*1*) Any workman who commences, continues, or otherwise acts in furtherance of a strike which is illegal under this Act shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

(*2*) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Penalty for instigation etc.

27. Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out, which is illegal under this Act shall be punishable with imprisonment for a term which

may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for giving financial aid to illegal strikes and lock-outs.

28. Any person who knowingly expends or applies any money in furtherance or support of any strike or lock-out which is illegal under this Act shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Penalty for other offences.

29 (*1*) Any employer who contravenes the provisions of section 22 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(*2*) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

Powers of the Appellate Tribunal in relation to contempts.

30. (*1*) If any person—

(*a*) when ordered by a tribunal or the Appellate Tribunal to produce or deliver up any documents, being legally bound intentionally omits to do so, or

(*b*) when required by tribunal or the Appellate Tribunal to bind himself by an oath or affirmation to state the truth, refuses to do so, or

(*c*) being legally bound to state the truth on any subject to a tribunal or the Appellate Tribunal, refuses to answer any question put to him touching such subject by such tribunal or the Appellate Tribunal, or

(*d*) refuses to sign any statement made by him when required to do so by an industrial tribunal or the Appellate Tribunal, or

(*e*) intentionally offers any insult or causes any interruption to an industrial tribunal or the Appellate Tribunal at any stage of its judicial proceeding,

he shall be deemed to be guilty of contempt of such industrial tribunal or the Appellate Tribunal, as the case may be.

(*2*) If any person commits any act or publishes any writing which is calculated to improperly influence an industrial tribunal or the Appellate Tribunal or to bring such industrial tribunal or the Appellate Tribunal or any member thereof into disrepute or contempt or to lower its or his authority, or to interfere with the lawful process of any such industrial tribunal or the Appellate Tribunal, such person shall be deemed to be guilty of contempt of such industrial tribunal or the Appellate Tribunal as the case may be.

(*3*) The Appellate Tribunal shall have and exercise the same jurisdiction, power and authority, in accordance with the same procedure and practice, in respect of contempts of itself and of all the industrial tribunals, as the High Courts have and exercise in respect of themselves and courts subordinate to them under the Contempt of Courts Act, 1971. 70 of 1971.

Offence by companies, etc.

31. Where a person committing an offence under this Act is a company, or other body corporate, or any association of persons (whether incorporated or not), every director, manager, secretary agent or other officer or person concerned with the management thereof shall unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

Cognizance of offences.

32. (1) No court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government or by an officer empowered in this behalf by such Government, by a general or special order.

(2) No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

Representation of parties.

33. (1) A workman who is a party to an appeal shall be entitled to be represented in any proceeding under this Act by—

(a) any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to an appeal shall be entitled to be represented in any proceeding under this Act by—

(a) an officer of an association of employers of which he is a member,

(b) an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) A party to a proceeding under this Act may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Appellate Tribunal.

Power to make rules.

34. (1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which an appeal may be preferred and the form of appeal; the matters in respect of which the Appellate Tribunal may have jurisdiction;

(*b*) the fees to be paid and the procedure to be followed in relation to such appeal;

(*c*) costs, and the manner in which they may be recovered;

(*d*) the persons who may be appointed as commissioner under section 20; their powers and duties and the fees, if any, to be paid to the commissioners;

(*e*) the records to be maintained under section 21 and the manner in which they will be maintained;

(*f*) the manner in which workmen or employers may be represented before the Appellate Tribunal;

(*g*) any other matter which has to be or may be prescribed.

STATEMENT OF OBJECTS AND REASONS

The working of the Industrial Disputes Act, 1947, which introduced for the first time the principle of adjudication, had revealed the need for a Central Appellate Authority which, by its decisions, would co-ordinate the activities of the large number of Industrial Tribunals set up by the Central and State Governments. Some Tribunals had been known to take divergent views on important issues. Industrial undertakings with branches in more than one State and particularly those that employ transferable staff on all-India basis, have had to face anomalies and complications arising out of the varying decisions of Tribunals in different States. As a result, there had been a persistent demand for some time past for the setting up of an Appellate Tribunal and an act known as "Industrial Disputes (Appellate Tribunal) Act, 1950" was passed. It also made certain incidental amendments to the Industrial Disputes Act, 1947. The said Act was subsequently repealed and Labour Appellate Tribunals were abolished.

Since the repeal of this Act in 1955, it has acted to the detriment of labour instead of helping them by reducing litigation, as was expected. Because of the absence of abolition of Labour Appellate Tribunals more cases are now being filed, under articles 226 and 227 of the Constitution of India, in the different High Courts against judgments and awards of National Tribunals, Industrial Tribunals, and Labour Courts by the employers than before. Besides, there are very many cases in the Supreme Court also on appeal by special leave under Article 136 of the Constitution of India, by the employers. The reply of the Labour Minister in the last Session of the Rajya Sabha to a question showed that on an average the labour succeeded only in 25 per cent of the contested cases before the Tribunals and Labour Courts constituted by the Central Government. In 75 per cent of the cases where labour lost they could not excepting a few instances, get the benefit of justice by appeal in the Supreme Court by special leave or by writ petitions in High Courts for want of necessary funds. But in 25 per cent of the cases, where the labour won; the employers, in most of the cases went either to the High Court or to the Supreme Court, and dragged the poor labour to expensive and time-consuming litigation. The provision of appeal before the labour Appellate Tribunal will also considerably reduce the number of writ petitions in High Court and appeals in the Supreme Court as in that event the superior courts will sparingly entertain cases against awards in industrial adjudications. The only remedy in the circumstances appears to be to substantially reintroduce the provisions of the Industrial Disputes (Appellate Tribunal) Act for appeal, which was less expensive and also speedy at the same time for correcting the errors, if any, in the awards of National Tribunals, Tribunals and Labour Courts. The statistics of the Central Labour Ministry as to the percentage of success of labour in contested cases may also be assumed to be the same before the State Tribunals and Labour Courts. The reasons which weighed with the Parliament to enact the Industrial Disputes (Appellate Tribunal) Act in 1950 holds good even today.

Hence this Bill.

DWIJENDRALAL SEN GUPTA.

FINANCIAL MEMORANDUM

Clause 4 of the Bill envisages the Constitution of an Appellate Tribunal. The Appellate Tribunal consists of a Chairman and such number of other members as the Central Government may, from time to time think fit to appoint. The annual expenditure on the Tribunal will be as follows:—

Remuneration of members and staff	Rs. 10,78,500
Travelling Allowance	50,000
Other Charges	1,00,000
TOTAL	Rs. 12,28,500

Clause 8 of the proposed Bill seeks to provide for the constitution of Benches of the Appellate Tribunal for carrying out the functions and exercising the powers of the Appellate Tribunal. The estimated annual expenditure on this Account is estimated as under:—

Remuneration of Officers and staff	Rs. 4,60,000
Travelling Allowance	20,000
Other Charges	80,000
TOTAL	Rs. 5,60,000

3. The total estimated annual expenditure that would be required to be met out of the Consolidated Fund of India if the Bill is passed into law would, therefore, approximately, be Rs. 18,47,800.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 35 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. The matters in respect of which such rules may be made are matters of procedure or administrative details. The delegation of legislative power is thus of a normal character.

III

BILL No. XXX OF 1973

A Bill to amend the Trade and Merchandise Marks Act, 1958.

BE it enacted by Parliament in the Twenty-fourth year of the Republic of India as follows:—

Short Title.

1. This Act may be called the Trade and Merchandise Marks (Amendment) Act, 1973.

Insertion of new section 88A. Offences to be cognizable.

2. After section 88 of the Trade and Merchandise Marks Act, 1958, hereinafter referred to as the principal Act, the following section shall be inserted, namely:— 43 of 1958.

"88-A. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, all offences mentioned in Chapter X of this Act shall be deemed to be cognizable." 5 of 1898.

Amendment of section 89.

3. Sub-section (*1*) of section 89 of the principal Act shall be omitted.

STATEMENT OF OBJECTS AND REASONS

Offences under the Trade and Merchandise Act, 1958, have increased enormously during the last few years. As they are non-cognizable, it is difficult to bring the culprits to book. By the time a complaint is filed and search warrant is obtained, the goods disappear. It is, therefore, necessary to make these offences cognizable.

Hence this Bill.

VITHAL GADGIL.

IV

BILL No. XXXII OF 1973

A Bill further to amend the Advocate Act, 1961.

BE it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Advocates (Amendment) Act, 1973.

Substitution of new section for section 29.

2. For section 29 of the Advocates Act, 1961 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:— 25 of 1961.

Advocates to be the only recognised class of persons entitled to practise law.

"29. (*1*) Subject to the provisions of this Act, and rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.

(2) Notwithstanding anything contained in sub-section (*1*), each class of legal practitioners who before the date on which the provisions of this Act were brought into force was practising the profession of law shall be deemed to have become advocates from the said date and shall have the same rights to practise the profession of law which they enjoyed before this Act came into force."

Substitution of new section for section 30.

3. For section 30 of the principal Act, the following section shall be substituted, namely:—

Right of Advocates to practise.

"30. Subject to the provisions of this Act, every Advocate whose name is entered in the State Roll or such other class of legal practitioners who is deemed to have become an Advocate on the appointed day shall be entitled as of right to practise throughout the territories to which this Act extends,—

(*i*) in all courts, including the Supreme Court of India and the High Courts in exercise of their original jurisdiction;

(*ii*) before any Tribunal or person legally authorised to take evidence; and

(*iii*) before any authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.".

Omission of section 31.

4. Section 31 of the principal Act shall be omitted.

Substitution of new section for section 34.

5. For section 34 of the principal Act, the following section shall be substituted, namely:—

Power of High Court to make Rules.

"34. (*1*) Subject to the provisions of sections 29 and 30 of the Act, the High Court may make rules laying down the conditions subject to which an advocate shall be entitled to practise in the High Court and the Courts subordinate thereto.

(2) Until the rules are made under this section, any rules made by the High Court under its Letters Patent or any other law relating to any of the matters specified in this section which were in force immediately before the appointed day shall continue to remain in force only in so far as are consistent with the provisions of this Act, and shall be deemed to be rules made under this section.".

Substitution of new section for section 50.

6. For section 50 of the principal Act, the following section shall be substitued, namely:—

Repeal of certain enactments.

"50. On the date on which Chapter IV comes into force, the following provisions shall stand repealed, namely:—

(*a*) sections 4, 5, 10 and 20 of the Legal Practitioners Act, 1879, and so much of sections 8, 9, 19 and 41 of that Act as confer on legal practitioners the right to practise in any court or before any authority or person;

18 of 1879.

(b) section 14 of the Indian Bar Councils Act, 1926, and so much of sections 8 and 15 of that Act as confer on legal practitioners the right to practise in any court or before any authority or person; 38 of 1926

(c) the Supreme Court Advocates (Practice in High Courts) Act, 1951; and 18 of 1879

(d) the provisions of the Letters Patent of any High Court and of any other law conferring on legal practitioners the right to practise in any court or before any authority or person.".

STATEMENT OF OBJECTS AND REASONS

The dual system dividing the legal profession into two branches, *viz.*, barristers or advocates on the one side and solicitors or attorneys on the other side obtains only in three cities in the world, London, Bombay and Calcutta. The system of solicitors on the Original Side of the High Court of Calcutta and Bombay is responsible for delays. It is also a very expensive system. It has no justification except that it is a legacy of the British. There is an almost unanimous demand of lawyers and litigants in Bombay and Calcutta that the dual system should be abolished or at least it should be made voluntary.

The Joint Select Committee on the Advocates (Amendment) Bill, 1970 had also recommended that the system should be abolished.

The Bill seeks to achieve the above objects.

VITHAL GAGDIL.

B. N. BANERJEE,
Secretary-General.

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